

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Respondent, :

v. :

AHMED WALKER,

Movant. :

Civil No.: \_\_\_\_\_

Underlying Case No.: **FILED**

HARRISBURG, PA

1:CR-00-300

JUN 17 2008

(Rambo, J.) **MARY E. D'ANDREA, CLERK**  
Per Deputy Clerk

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**MOVANT AHMED WALKER'S MOTION UNDER 28 U.S.C. § 2255  
TO VACATE, SET ASIDE, OR CORRECT SENTENCE  
BY A PERSON IN FEDERAL CUSTODY**

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Ahmed Walker  
Reg. No. 10837-067  
United States Penitentiary  
Allenwood  
P.O. Box 3000  
White Deer, PA 17887

Movant, *pro se*

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District M.D. Pa.	
Name (under which you were convicted): <b>Ahmed Walker</b>		Docket or Case No.: <b>1:CR-00-300</b>	
Place of Confinement: <b>USP Allenwood</b>		Prisoner No.: <b>10837-067</b>	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
v.		<b>Ahmed Walker</b>	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: USDC, M.D. Pa., Harrisburg, Pa.

(b) Criminal docket or case number (if you know): 1:CR-00-300

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2. (a) Date of the judgment of conviction (if you know): February 26, 2002

(b) Date of sentencing: February 13, 2003

3. Length of sentence: 681 months

4. Nature of crime (all counts): Count 1 - 18 USC §§ 924(c)(1)(A) and 924 (o);  
Count 3 - 18 USC §§ 924(c)(1)(A) and 924 (c)(1)(C)(I); Count  
4 - 18 USC §§ 924(c)(1)(A)(I), (II), (III) and 924(c)(1)(C)  
(I); Count 5 - 21 USC § 846; and Count 6 - 21 USC § 841(a)(1).

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

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Movant was re-sentenced on October 28, 2005 to 622 months.

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: USCA, Third Circuit
- (b) Docket or case number (if you know): 136 Fed. Appx. 524 (3rd Cir. 2005)
- (c) Result: Affirmed in part, vacated in part, and remanded.
- (d) Date of result (if you know): June 27, 2005
- (e) Citation to the case (if you know): See (b) supra and (f) infra
- (f) Grounds raised: See United States v. Walker, 136 Fed. Appx. 524, 526 (3rd Cir. 2005)

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- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): No. 05-8624
- (2) Result: denied
- (3) Date of result (if you know): February 21, 2006
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information: N/A

- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

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Following re-sentencing and direct appeal, Movant filed a petition for certiorari, No. 06-11022. The petition was denied on June 18, 2007.

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: See attached pages

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

See accompanying Memorandum of Law

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: See attached pages.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

See accompanying Memorandum of Law

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: See attached pages.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See accompanying Memorandum of Law

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel and/or novel claim not available to Counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_



Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: See attached pages.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

See accompanying Memorandum of Law

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

No grounds, attached herewith, were ever previously presented in some federal court.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Terrence J. McGowan, 218 Pine Street,  
Harrisburg, PA 17101

(b) At arraignment and plea: "

(c) At trial: "

(d) At sentencing: "

(e) On appeal: R. Damien Schorr, 1015 Irwin Drive,  
Pittsburg, PA 15236

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A

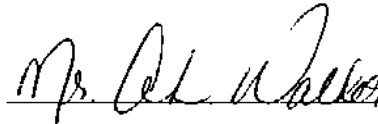
\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: vacate the convictions  
and sentences and allow the government 70 days to retry.

or any other relief to which movant may be entitled.



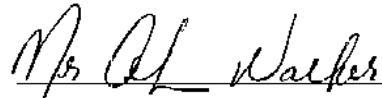
Signature of Attorney (if any)

Ahmed Walker

Movant, pro se

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this  
Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on June 12<sup>th</sup>, 2008  
\_\_\_\_\_ (month, date, year).

Executed (signed) on 6-12-08 (date).



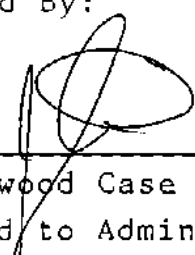
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this  
motion. N/A

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\*\*\* Given to prison officials on 06/12/2008.

Witnessed By:

  
\_\_\_\_\_  
USP Allenwood Case Manager  
Authorized to Administer Oaths

**J. Kaminski, Case Manager,  
Authorized by the Act of July 7,  
1955, as amended to administer  
oaths (18 USC 4004)**

**12. GROUND ON WHICH MOVANT CLAIMS HE IS BEING HELD UNLAWFULLY**

I. THE COURT COMMITTED LEGAL ERROR IN GIVING ITS JURY INSTRUCTIONS AND IN DOING SO, CONSTRUCTIVELY AMENDED COUNT 3 OF THE INDICTMENT

II. TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS ANY EVIDENCE RELATING TO THE SEARCH AND SEIZURE OF THE PREMISES KNOWN AS 315 NORTH 9<sup>TH</sup> ST., APT. 3 IN LEBANON, PENNSYLVANIA.

III. ONE OF THE ALTERNATIVE THEORIES SUPPORTING MOVANT'S CONVICTION ON COUNT 4 IS EITHER UNCONSTITUTIONAL, OR LEGALLY INVALID

IV. COUNT 4 FAILED TO CHARGE MOVANT WITH ANY CODIFIED FEDERAL CRIME

V. COUNT 4 IS DUPLICITOUS. THIS VIOLATED MOVANT'S SIXTH AMENDMENT RIGHT TO A UNANIMOUS JURY VERDICT.

VI. THE TWO § 924(c)(1) COUNTS, COUNTS 3 & 4 ARE BASED ON A SINGLE "UNIT OF PROSECUTION" THEREFORE THE MULTIPLE § 924(c)(1) CONVICTIONS ARE IMPROPER.

VII. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST A CURATIVE INSTRUCTION AT THE TIME HIS SECOND MOTION FOR MISTRIAL WAS MADE AND DURING THE COURT'S CHARGE TO THE JURY. APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT CLAIMING THAT THE TRIAL COURT ABUSED HER DISCRETION IN NEITHER GRANTING THE MOTIONS FOR MISTRIAL NOR GRANTING MOVANT'S MOTION FOR A NEW TRIAL.

VIII. TRIAL COUNSEL WAS INEFFECTIVE FOR REQUESTING TO STIPULATE TO THE ADMISSION OF TESTIMONY ABOUT TWO YEAR OLD JUSTINA PEREZ WHO WAS SHOT ON JULY 18, 2000, AND FOR FAILING TO REQUEST A LIMITING INSTRUCTION. APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT APPEALING THAT THE COURT ABUSED HER DISCRETION IN ALLOWING SAID TESTIMONY AND IN NOT ADMINISTERING AN APPROPRIATE LIMITING INSTRUCTION

IX. TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO INVESTIGATE AND PRESENT WITNESSES FAVORABLE TO MOVANT'S DEFENSE.

X. APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT CONTENDING ON APPEAL THAT THE DISTRICT COURT ABUSED HER DISCRETION IN COUNTING MOVANT'S DELINQUENCY ADJUDICATION IN HIS CRIMINAL HISTORY CALCULATION.

XI. TRIAL COUNSEL WAS INEFFECTIVE AT SENTENCING BECAUSE THE COURT WAS NOT MADE AWARE OF MOVANT'S MENTAL HEALTH PROBLEMS.

XII. TRIAL COUNSEL WAS INEFFECTIVE FOR SUGGESTING A DEFENSE THAT WAS NOT LEGALLY VIABLE.

XIII. TRIAL COUNSEL WAS <sup>and 33</sup> INEFFECTIVE FOR NOT SUBMITTING, UNDER Fed.R.Crim.P. 29, THAT THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING OF GUILT ON COUNTS 3, 4, AND 6 ON THE GOVERNEMENT'S THEORY OF AIDING AND ABETTING. APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT CHALLENGING THE DISTRICT COURT'S DISCRETION ON GIVING AN AIDING AND ABETTING INSTRUCTION.

XIV. COUNSEL'S CUMULATIVE ERRORS VIOLATED MOVANT'S FIFTH AMENDMENT DUE PROCESS RIGHT AND SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

Ahmed Walker  
Reg. No. 10837-067  
U.S. Penitentiary Allenwood  
P.O. Box 3000  
White Deer, PA 17887

June 12, 2008

Clerk of Court  
United States District Court  
Middle District of Pennsylvania  
P.O. Box 983  
Harrisburg, PA 17108

Re: Post conviction motion submitted under  
28 U.S.C. § 2255; United States v.  
Walker, Civil No. \_\_\_\_\_  
(Rambo, J.)

Dear Clerk:

Pursuant to LR 5.2, please find "original" motion to vacate set aside or correct sentence under 28 U.S.C. § 2255 submitted to you for electronic filing.

Additionally, in accordance with LR 7.30 and LR 83.32.1, Movant will submit his memorandum of law (brief) in support of his § 2255 motion no later than thirty (30) days after the electronic filing of his § 2255 motion.

Because of the complexity of the case and the number of grounds addressed, Movant's brief, although brief, is lengthy. Out of an abundance of caution and with respect, Movant moves the court for leave to file his pro se memorandum of law with excess pagination not to exceed one hundred (100) pages.

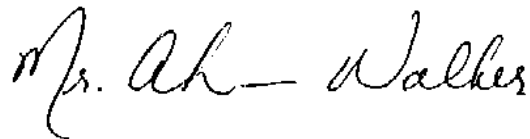
Lastly, as the Clerk is aware, the Court must give Movant's motion with brief and supporting documents preliminary consideration under Rule 4, Rules Governing § 2255 proceedings. In the interim,



under Rule 3, Rules Governing § 2255 Proceedings, the Clerk shall electronically serve a copy of the motion on the U.S. Attorney of the district in which the judgment under attack was entered.

If you have any questions/concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Mr. Ahmed Walker". The signature is written in dark ink and is positioned above the printed name.

Ahmed Walker

Movant, pro se

Enclosure



Ahmed Walker

108370667

U.S. Penitentiary

P.O. Box 3000

White Deer, PA

17887

JUN 13 2008

LED FROM  
PENITENTIARY

Office of the Clerk

U.S. District Court

Middle District of Pennsylvania

U.S. Courthouse

228 Walnut Street

P.O. Box 983

Harrisburg, PA 17108

LEGAL  
MAIL